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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/074,032 | 02/14/2002 | Christopher T. Rich | P67597US0 | 5664 |
| 136 | 7590 | 10/03/2003 | EXAMINER | |
| JACOBSON HOLMAN PLLC 400 SEVENTH STREET N.W. SUITE 600 WASHINGTON, DC 20004 | | | NGUYEN, SON T | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3643 | |

DATE MAILED: 10/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/074,032

Applicant(s)

RICH, CHRISTOPHER T.

Examiner

Son T. Nguyen

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 February 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4,5. 6) ☐ Other: _____

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "44" has been used to designate both raised portion of cap and internal flange. Reference character "36" has been used to designate both wire loops and internal cavity. Reference character "52" has been used to designate both peripheral flange and internal flange. Reference character "70" has been used to designate both fingers and pins. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

2. The disclosure is objected to because of the following informalities: on page 7, line 17, the phrase "Serial No. _____ filed" is unclear.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. **Claim 1** is rejected under 35 U.S.C. 102(b) as being anticipated by Lipton (US 5111772). Lipton teaches in a bird feeder comprising a housing 1, a hopper 8 carried by said housing for receipt of bird food, and a hanger (the eyelet on top of the housing)

for attaching said housing to a support for the bird feeder, the improvement which comprises said hopper being removable from said housing to refill and clean said hopper without removing said hanger from its support (col. 1, lines 62-66 and col. 3, lines 15-20).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. **Claims 2-15,17** are rejected under 35 U.S.C. 103(a) as being unpatentable over Lipton (as above) in view of Cote (US 6253707B1) and Kilham (US 3568641).

For claims 2,10 & 17 Lipton further teaches the housing comprises a cage having top portions and bottom portions (col. 3, lines 13-16), and said housing further including a base 4 removably secured to said bottom portions of said cage (col. 3, lines 16-20), and said hopper being carried by said base inside said cage for removal from said cage with said base. However, Lipton is silent about a cover secured to said top portions of said cage, and said hanger secured to said cover. Cote teaches a bird feeder in which he employs a cover 18 secured to top portions of a cage 14, wherein portions 86,87,88,90 of said cover define a downwardly depending internal flange (see fig. 5), and said internal flange on said cover is seated over said top portions 38 of said hopper 12. Kilham teaches a bird feeder 10 comprising a cover 18 secured to top portions of the feeder 10 and a hanger 24 secured to the cover 18, the hanger 24 is a

wire loop having opposed ends secured to said cover. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a cover as taught by Cote on the top portions of the cage of Lipton in order to protect the feeder from debris. In addition, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a cover with a hanger secured thereto as taught by Kilham on the top portions of the cage or feeder of Lipton as modified by Cote in order to allow hanging of the feeder and to cover the feeder.

For claim 3, Lipton as modified by Cote and Kilham (emphasis on Lipton) further teaches the cage defines a multiplicity of apertures 11, the hopper 8 includes top portions and bottom portions and defines an internal cavity for receipt of bird food, a plurality of spaced feed ports (the apertures in the mesh hopper 8 are considered feed ports) in the hopper intermediate said top and bottom portions of said hopper, said feed ports communicating with said internal cavity of said hopper, and selected apertures in said cage being aligned with said feed ports.

For claim 4, Lipton as modified by Cote and Kilham (emphasis on Lipton) further teaches the cage is a wire cage.

For claim 5, in addition to the above, Kilham further teaches feed ports 32 on his feeder 10, each feed ports include a semicircular cap 48 extending into said internal cavity of said hopper. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a hopper with feed ports that include semicircular cap as taught by Kilham in the feeder of Lipton as modified by Cote and Kilham in order to prevent squirrels or the like to get their paws into the hopper

sufficiently to get at the feed so as to scrape it out of the feeder and to prevent wind from spilling the feed therein (col. 3, lines 25-35 of Kilham).

For claims 6 & 7, in addition to the above, Kilham teaches the hopper/feeder being made out of transparent plastic. It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the hopper of Lipton as modified by Cote and Kilham out of transparent plastic as taught by Kilham in order to allow visibility of the seeds to the birds from outside the feeder and to assist a user in refilling the feeder when empty (col. 2, lines 12-15 of Kilham).

For claims 8 & 9, Lipton as modified by Cote and Kilham teaches the hopper being tubular and cylindrical.

For claim 11, Lipton as modified by Cote and Kilham (emphasis on Lipton) further teaches bottom portions of said hopper are seated on said base of said housing (col. 3, lines 21-28 of Lipton). In addition to the above, Cote teaches a bird feeder comprising a hopper 12 having top portions that are open. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the top portions of Lipton as modified by Cote and Kilham's hopper open as taught by Cote in order to allow a user to refill the hopper with feed.

For claim 12, Lipton as modified by Cote and Kilham is silent about the bottom portions of the hopper are open so that the portions can be seated over an internal flange on the base. In addition to the above, Cote teaches the hopper 12 having open bottom portions so as to be seated over an internal flange (see fig. 1 where ref. 20 is pointing at, there exists a downward extending flange) on a base 20 of the housing 14.

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a base as taught by Cote in place of the base of Lipton as modified by Cote and Kilham since Cote's base is functional equivalent base to that of Lipton as modified by Cote and Kilham (emphasis on Lipton) in a sense that both bases function to support the hopper inside the housing. In addition, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the bottom portions of the hopper of Lipton as modified by Cote and Kilham be open so that the portions can be seated over an internal flange on a base as taught by Cote since, again, Cote's base is functional equivalent base to that of Lipton as modified by Cote and Kilham (emphasis on Lipton) in a sense that both bases function to support the hopper inside the housing. Lipton as modified by Cote and Kilham (emphasis on Cote) is silent regarding the flange being extended upwardly. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the downwardly extending flange of Lipton as modified by Lipton as modified by Cote and Kilham be upwardly extending flange since both directions of the flange are functional equivalent in a sense that they both would support the hopper's bottom portions.

For claim 13, in addition to the above, Cote further teaches portions of said base define a floor element (see fig. 3 for close up view of base 20, refs. 56,54,52 are considered to be floor element), said floor element underlying said bottom portions of said hopper when said hopper is seated on said base. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a base

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defining a floor element as taught by Cote in the feeder of Lipton as modified by Lipton as modified by Cote and Kilham in order to support the hopper and close off the hopper's bottom portions so that feed will not spill out.

For claim 14, in addition to the above, Cote further teaches in an alternative embodiment (fig. 16) fastening members 282 removably interconnecting said bottom portions of hopper 228 to internal flange 260,261 on base 216. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ removable fastening members as taught by Cote in the feeder of Lipton as modified by Cote and Kilham in order to further secure the hopper to the base.

For claim 15, Lipton as modified by Cote and Kilham (emphasis on Cote, fig. 16) further teaches the fastening members 282 comprise a plurality of screws extending outwardly at spaced locations about said internal flange of said base, and complementary slots (holes where the screws go therein) defined in said bottom portions of said hopper to removably connect said hopper to said base by slidingly engaging said slots over said pins (one has to slide the holes to align the screws with the holes). However, Lipton as modified by Cote and Kilham (emphasis on Cote, fig. 16) is silent regarding the fastening members being pins. It would have been an obvious substitution of functional equivalent to substitute the screws of Lipton as modified by Cote and Kilham (emphasis on Cote, fig. 16) with pins, since it would perform the same function; i.e. to fasten one member to another member.

7. **Claims 16,18,19** are rejected under 35 U.S.C. 103(a) as being unpatentable over Lipton as modified by Cote and Kilham as applied to claims 1-3,11,12,14,15 above, and further in view of Harwich (US 6067934).

For claim 16, Lipton as modified by Cote and Kilham is silent about fastening members having slots defined in said bottom portion of said hopper are inverted L-shaped slots each of which includes a first part extending upwardly from a lower edge of said hopper and a second part laterally offset from the upper end of said first part, whereby said first parts of said slots can be slid downwardly over said pins and then said hopper can be twisted relative to said base to engage said pins in said second parts of said slots. Harwich teaches a bird feeder in which she employs fastening members having slots 44 defined in a top portion of a feeder, the slots are inverted L-shaped slots each of which includes a first part extending upwardly from a lower edge of the feeder and a second part laterally offset from the upper end of a first part, whereby first parts of the slots can be slid downwardly over pins 45 and then the feeder can be twisted relative to a top to engage the pins in the second parts of the slots. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the fastening members having the features as described above as taught by Harwich in place of the fastening members of Lipton as modified by Cote and Kilham (emphasis on Cote's screws 282 and slots where the screws go into, since both fastening members are functional equivalent in a sense that they both connect one member to another member.

For claims 18 & 19, as explained in the above, Lipton as modified by Cote, Kilham and Harwich (emphasis on Harwich) teaches offset slots 44 and lugs 45 to connect one member 42 to another member 26 of the feeder 20. In addition, Cote teaches flange 60 to support bottom portions of cage 14 as shown in fig. 3. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a base that includes an upwardly extending peripheral flange, a plurality of fingers extending outwardly about the bottom portions of the cage, and complementary grooves defined in the peripheral flange of the base to removably secure the cage to the base by slidably engaging the fingers in the grooves, and the grooves defined in the peripheral flange of the base each include a first part extending downwardly at an angle from an upper edge of the peripheral flange, and a second part extending upwardly from the end of the first part, whereby the fingers can be slid downwardly along the first parts of the grooves and will slide upwardly into the second parts of the grooves under the influence of gravity pulling the base downwardly in the feeder of Lipton as modified by Cote, Kilham and Harwich since the offset slots, lugs and flange of the feeder of Lipton as modified by Cote, Kilham and Harwich are functional equivalent type of fastening members or connection members as that of the above described fingers and grooves because both types of fastening members will perform to connect one member to another member to form a tight connection between the two.

8. The following prior arts are made of record to provide the best available relevant examples of a bird feeder in which the hopper is removable from the housing for refill

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and clean without removing the hanger of the housing from its support: 6453843, 4434745, 2618238, 5016573, D448126, D351691, D351262, GB 2275408.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is (703) 305-0765. The examiner can normally be reached on Monday - Friday from 9:00 a.m. to 5:00 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon, can be reached at (703) 308-2574. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Customer Service at (703) 872-9325. The official fax number is 703-872-9306.



Son T. Nguyen
Primary Examiner, GAU 3643
September 24, 2003